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OBSERVATIONS ABOUT WESTMINSTER HALL AND LINCOLN'S
INN.

ONE cannot remain for months about Westminster Hall and Lincoln's Inn, and in daily attendance upon the Courts of Common Law and Chancery, without learning many things, of interest to the American bar, which he would never otherwise learn. But after having received such kindness and hospitality from the English bar and the English judges as cannot fail to inspire feelings of the most profound and grateful respect and affection, one naturally feels great reluctance to speak of the detail of the administration of justice here, lest, inadvertently, some possible breach of the confidence of social life might be committed or suspected.

But, speaking only of those things which are patent and open to all, it must be conceded that the English courts have many advantages over us in searching out the head-springs and foundations of the law, which must always give the decisions here greater weight. On one occasion this was made very obvious in the trial of a recent suit in equity, on appeal, before the Lord Chancellor and the Lords Justices, sitting as the full Court of Chancery Appeal, in the Lord Chancellor's room. A case was cited which had not been fully reported. It was the case of *The President of the United States v. The Executors of Smithson*, for the obtaining of the Smithsonian fund. The inquiry before the court at the time was, in what name the United States might properly

sue. It was contended, on the one side, and so held in Vice-Chancellor WOOD's Court, that they could only sue in the name of some official party or personage, authorized to represent the interests of the government, and to answer any cross-bill the other party might bring; while, on the part of the government, it was very naturally insisted that they should be allowed to sue in the name given in the Constitution, and the only name by which they ever had sued in their own courts. This suit was brought in that name and dismissed in the Vice-Chancellor's Court, because no personal party had been joined. The case alluded to was brought in for the purpose of showing that they had before sued in the English courts of equity in the name of the President of the United States. It became important, therefore, to show how far this case, for the recovery of the Smithson legacy, differed from the ordinary case of the government suing for the recovery of its own property. The court ordered the registrar to bring in the file: when it appeared that, by a special Act of Congress, the President had been authorized to sue for and recover this particular legacy, thus constituting him a special trustee to receive the same on behalf of the government, and consequently to discharge the executor upon such receipt of the fund. This enabled the court to perceive that it had no bearing whatever upon the general question, and thus virtually confirmed the impression and intimation of the Court of Appeal, that, as they expressed it, "The Government of the United States must be allowed to sue for their own property in their own name;" and this intimation has been since confirmed by the unanimous decision of the full Court of Chancery Appeal. The advantage of this ready opportunity of consulting the records of equity cases in the registrar's office, in order to supply any deficiencies in the reports, is often witnessed in hearings in equity in the English courts. And there are many other traditional benefits resulting naturally from being upon the ground and having at command all the appliances of such ready access to records and documents, which can never be transferred into a distant country. This, of itself, must always render these localities of great interest to Americans.

And there are some other things one meets in the English courts which naturally inspire admiration. The judges seem far more familiar with the leading members of the bar than is

common in our country. Being in court during the whole time of the delivery of the almost interminable judgment in the late case of *Slade v. Slade*, in the Exchequer, when the law and the fact both were, by agreement of parties, referred to the court, which occupied more than four hours in the delivery, we noticed billets passing between the court and the counsel engaged in the cause in the most familiar manner, indicating the most perfect confidence and intimacy. And in all the arguments which we have listened to in the courts, either of common law or equity, there is a constant conversation kept up from the bench, but in such a common-place and kindly manner, that the counsel against whom suggestions and intimations are made do not seem at all embarrassed by them. The wonder seems to be how counsel can continue such persevering arguments under such multiplied rebuffs as sometimes fall from the bench here. In one case, where the argument continued six or seven hours, there was a constant argument on the part of the bench against the decision of the court below (it being a hearing on appeal). That was indeed a very remarkable case, already referred to, where Vice-Chancellor WOOD, upon the supposed authority of a dictum of Sir JOHN LEACH, solemnly decided that, although a foreign government might sue in a court of equity in England for the vindication of its property rights, the United States of America could not sue in that name, notwithstanding the fact that this was the only name by which they had ever been known in any public acts with Her Majesty's Government; but that they must join some personal party for the mere purpose of enabling the opposite party to obtain a discovery by cross-bill, upon oath. Nothing could seem more unreasonable upon the face of it, and so it was held upon appeal. But these constant and repeated intimations from the bench that it was impossible to maintain the decision below without a virtual denial of all remedy to the United States, since the denial of the right to sue in one's own name seemed quite the same thing as the denial of all remedy; all this, and much more of the same kind, did not seem in the least to daunt the courage of the counsel.

At the conclusion of his judgment in the case of *Slade v. Slade*, Baron MARTIN said he wished, on his own personal account alone, to enter his solemn protest against the practice of submitting matters of fact to the determination of the court instead of

the jury. He believed nothing was more unsatisfactory than the trial of matters of fact by the judges. He believed the jury the only proper tribunal for the determination of matters of fact ; and he must say that he believed one great reason why the decision of matters of fact by the jury was so satisfactory was, that they were not required to assign reasons for their decisions. He thought it not improbable that if jurymen were required to submit to the cross-examination of counsel, as to the grounds of their verdict, they would be quite as much puzzled to find satisfactory reasons for all their decisions as any of the witnesses in the present case.

It seemed that the amount of testimony in this case of *Slade v. Slade* was quite fabulous, and the cost of procuring it almost monstrous, exceeding \$150,000. It is true the determination of the suit involved an inquiry into the validity of a marriage celebrated in Lombardy, an Italian province of the Austrian Empire, at the time more than forty years since, upon which depended the title to a baronetcy and large estates. And this incidentally involved inquiries into the civil and ecclesiastical law, both of Italy and Austria, to such an extent as to become, not only very difficult and perplexing, but almost impossible of any satisfactory determination. There was in consequence a resort to the testimony of legal experts, which was found, as usual, most unsatisfactory, there being about an equal number on either side, and each determined to vindicate the views of the party for which he had been called. This had led, in many instances, to a most extended cross-examination, in some instances extending over nearly twenty days, until in one case certainly, at the earnest request of the witness, an adjournment of the examination was had, in order to enable him to regain his health, which had been seriously impaired by the extended cross-examinations. We did not suppose any new light was to be gathered from the report of these illustrations of the abuse of the duties of experts or of examiners of witnesses ; but it seemed refreshing to find that in Westminster Hall, in one of the most venerable of her ancient courts, with her skilled and trained counsel, it was found impracticable to elicit from professional experts any thing but one-sided opinions. We do not know whether there is any inherent difficulty in so selecting experts as to render them fair and impartial ; but it appears that in England as well as

America, when it is allowed to be done by the parties, it is not easy to obtain any such result. That was the great difficulty in regard to the case of *Slade v. Slade*.

But to return to Baron MARTIN's protest against submitting matters of fact to the judges. He said his experience, which was now somewhat extended, convinced him that almost all the divided judgments which had been rendered in that court arose on matters of fact or construction, and not upon matters of pure law, in regard to which the judges almost never differed. We could not but feel gratified to find so experienced and able a member of the English bench confirming our own opinion, which we had long entertained, but which we believe is not universal with the American bar. There seems to be a growing opinion with the American bar that the jury are not to be relied upon as either fair or competent in the trial of matters of fact. We believe that complaint, or the cause of it, lies far more at the door of the judges than is commonly supposed. If the judge is indifferent, and suffers the cause to glide along without much care how it is decided, or if he is so muddy in his own views or in the mode of expressing them that he cannot make himself understood by the jury, it is not improbable that the results of jury trials will become most unsatisfactory. But where the judge feels bound to master the cause and the testimony, and really sums up in a manner to make the jury understand the law and the facts fully, and also the application of each to the other, the jury will be able to reach, in the majority of cases, a satisfactory result. And a jury does relieve the judge from great responsibility, and one which it is difficult for any tribunal to sustain, where reasons must be assigned for every judgment.

There is so much testimony which is either factitious or exaggerated, that it is impossible to decide matters of fact wisely and justly without disregarding much of the formal testimony, in regard to which there is no very obvious reason for its rejection, except the vague belief that there must be some mistake about it. But such a reason will not be likely to commend itself to the party who loses his cause in consequence of the rejection. Hence it has been said that courts of equity decide facts by counting the witnesses on either side, and that the Chancellor has no scales for weighing evidence. There will be some exceptions to these general rules, and some judges will possess an intuitive knowledge

of facts, as well as law, and will find some mode of satisfying the parties with the results to which their intuition leads them.

There is another thing which one can scarcely fail to admire in the English courts. There is no appearance of haste ; certainly not of hurry. Perhaps it is more apparent in passing from one cause to another than any where else. In an American court there seems to be a kind of horror or dread seizing upon the bench the moment one cause is coming to an end lest something else should be crowded in before the court can reach the next cause on the calendar. Some motion or some question seems to be the constant dread of the court the moment there is a pause between two causes. It is not so much so during the progress of the hearing, but the moment the final close is attained there is a rush for the next cause, so as to preclude all interruption. But nothing of that kind occurs here. This may be partly owing to some constitutional or habitual difference in the people of the two countries. For one cannot ride across the island of Great Britain, in any direction, in an express railway train, and not observe a very marked difference in two particulars between this and our own country, in the stops and in the progress. The train starts on the moment, at the click of the bell marking its time ; it runs with terrific speed to its next stopping-place, and reaches it the very moment it is due. Every thing then is quiet ; time enough for all changes, and every thing is ready, and very likely one or more minutes to spare before the times arrives for departure. This is most refreshing. So different from the pauses in railway travelling in our own country sometimes, where there is scarcely time to get out of the train before it is off, as if life and death hung upon losing no time at stops. So in court here. One cause is finished. Time is given to breathe ; to pack up books and papers, and to get in place for taking another cause ; and then, after every body gets ready, quietly start off.

We are by no means sure that a good deal of this quiet passage from one cause to another is not attributable to the fact that no motions can be interposed except upon motion day, and then mostly at Chambers. The English judges attribute their relief from perplexing impediments and motions of every grade of perplexity to the fact of sessions at Chambers, where most of these motions are heard, and where they are attended by solicitors, and not in general by counsel.

And this brings us to dwell for a moment upon the different grades of the English bar, which are maintained with great punctilio. The serjeants were long regarded as the highest rank of the profession. And now all the judges are made serjeants by special writ, before they can be sworn in as judges. But this is mere form. It is called taking the coif, and is regarded as a kind of degree or grade in the profession, which must be attained before they can be made judges. The order of serjeants was formerly much more numerous than at present, and they still compose a separate Inn, to which all the judges join themselves as soon as they become judges, and afterwards are not allowed to dine in the hall of their former Inn, except on state occasions (as the Grand Dinner at the close of Trinity Term, which fell this year upon the 12th of June), when some fifty to one hundred benchers and invited guests sit down at the high table, at the end of Middle Temple Hall, and four or five hundred in other parts of that vast hall, and partake of a dinner which would do credit to the first nobleman in England. After the removal of the cloth, the Master of the Temple, as the rector of the Temple Church is styled, returns thanks, and the benchers and honorary guests retire to the Bencher's Room for dessert, where, fruit and wine being served, the president first proposes the health of the Master of the Temple, who responds in a brief speech. Some other customary toasts follow, concluding with the health of the invited guests, who all respond, of course, in speeches of more or less brevity, as taste or inclination may suggest. On the present occasion, the predominant feeling seemed to be a desire for cordial good understanding with the American nation and people. Nothing but the entire reciprocation of that sentiment was offered in return. But the opportunity of reminding them of the fact that we claimed to be something more, and better, than a mere aggregation of separate sovereign states, held together by compact or treaty, was too inviting to be wholly disregarded. It was explained, in some degree, to that learned assembly of judges and benchers that a constitution which professed to create a paramount national sovereignty, and which in terms gave a national legislature and a national executive, and a national judiciary, having the power to enforce its own decrees by its own police and by the army and navy, and which had authority to define the limits of national jurisdiction, and to correct the decisions of all

the state courts bearing upon that point, must of necessity be paramount to all state sovereignty ; and that the result of the late national conflict was only to establish the decrees of the national courts of last resort, declared years before by our great expounder of the National Constitution, JOHN MARSHALL, and to enforce the eloquent expositions of our great national orator and senator, DANIEL WEBSTER, to which men the grand result might be as fairly and as truly attributable as to the victories of our armies in the field ; to all which these gentlemen responded with all earnestness and sincerity, and blessed the hour of our first and of our final independence. After having been present in that grand old hall of the benchers of three or more centuries standing, where the principles of English liberty had been cultivated and expressed, and having listened to the congratulations of the barristers and judges and the encomiums of the elder brethren towards the younger members of the same great family of juridical teachers and learners, one could not well believe in any natural rivalries or jealousies between the two people, except in the matter of each doing the best in its power to maintain and defend the grand and noble principles of English and American liberty. It was a grand and inspiring occasion, both to the English and the few representatives of the American bar.

But to return from this digression. The degree of Queen's Counsel has now practically superseded that of Serjeant. The first rank in the profession here next to the judges is the Attorney and Solicitor-General. Then follow some other officials in the profession, such as the Queen's Advocate-General in Scotland, &c. Then come the Queen's Serjeants by special writ, not exceeding two or three ; then Queen's Counsel, in the order of seniority of commission ; then ordinary barristers. These latter act as junior counsel, and the Queen's Counsel as seniors. These all wear gowns and wigs ; Queen's Counsel wearing silk, and the barristers below stuff, gowns. It is obvious from what one hears that the English bar are becoming, more or less, weary of being dressed up in such artificial costume, and that they would be glad, at once, to drop the wig, and many of them the gown also. The most marked indication in this direction which we noticed was in regard to the academic dress worn by the students at Oxford. We met hundreds there with their gowns in their hands, as one would carry a coat in a warm day, or any other garment,

which for any cause had become burdensome ! That did not seem common anywhere except among the students. The professors and tutors, the doctors and fellows, all wore the gown with dignified bearing and apparent self-satisfaction. But young men unconsciously catch the sense of the outward sentiment, and are proverbially sensitive to any feeling of ridicule in others towards either their conduct or their dress. This was the only possible explanation of the fact of finding so many, both within and without the college walls, with their academic gown in their hands, when the statutes of the university render it the indispensable badge to be worn at all times, in college hours. We believe, at Cambridge, there is some dispensation in that respect before dinner, and there you do not see the gown before that hour. But you see it always at Oxford, either worn or carried, and, as it seemed to us, more commonly the latter ! It is wonderful how this sense of the ridiculous will crowd out mere pageantry with sober and earnest men, when it once gets hold. We could but notice how willingly the English judges put aside their wigs and gowns at the state dinner, upon entering the Benchers' Hall, where alone it was allowable.

But we shall be in danger of becoming tedious. There is no place for the show of pageantry in dress equal to the Lord Mayor of London and the aldermen, when they appear on state occasions. Scarlet puts on its brightest hues and its broadest borders. Possibly in America we are in danger of disregarding forms too much. We have sometimes feared such a result. But one needs only to see how much of official duty here consists in mere ceremonial, to feel reconciled to its entire abandonment.

I. F. R.

LONDON, June 14th 1867.